GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Tribal Welfare Department –Appeal Petition filed by Kum. T.Aswani D/o T. Subbarayudu, Occ: Student, R/o Masakavankapalli(V), Anantapur District, against the proceedings No. MC3/9629/2011, dt.25.01.2013 of the District Collector, Anantapur, under section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No. 16/1993) – The matter is remanded back to District Collector, Anantapur – Orders - Issued.

TRIBAL WELFARE (CV2) DEPARTMENT

G.O.MS.No. 15 **Dated: 16-02-2017**

Read the following:

1. Proceedings of the District Collector, Anantapur, Rc.No.MC3/9629/ 2011, dt.25.01.2013.
2. Appeal Petition filed by Kum. T.Aswani D/o T. Subbarayudu, Occ: Student, R/o Masakavankapalli (V), H/o Kurumala, Naliamada Mandal, Anantapur District before M (TW), No.107/M(TW)/2013, dt.16.03.2013.
3. Govt., Memo No. 3442/CV.2/2013, T.W.(CV.2) Deptt., dt:19.03.2013.
4. Interim order of the Hon'ble High Court of A.P., Hyderabad in W.P.No. 10413/2013 filed by Kum. T. Aswani, dated 08.04.2013.
5. From the Dist. Collector, Anantapur, Lr.Rc.MC3/9629/2011, dated : 25.04.2013.
6. Order of the High Court of A.P., Hyderabad in W.P.No.14574/2014 filed by Kum. T. Aswani, dated 06.11.2014.
7. Govt. Memo No. 3442/CV.2/2013, TW (CV.2) Deptt., dt: 24.06.2015, 17.11.2015, 15.03.2016 & 29.04.2016.
8. Written arguments filed by the appellant through his Counsel before the Government on 14.05.2016.

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ORDER:

In the reference 1st read above the District Collector, Anantapur has issued orders canceling ST-Yanadi Caste Certificate obtained from the then Tahsildar, Nallamada, Anantapur District in 2009 by Kum. T.Aswani D/o T. Subbarayudu.

2. In the reference 2nd read above, Kum. T.Aswani D/o T. Subbarayudu has filed an Appeal Petition before the Government against the said Proceedings of the District Collector, Anantapur. After examining the said Appeal Petition, Government have admitted the said Appeal Petition & granted stay on the said proceedings of the District Collector, Anantapur and called for the parawise remarks and connected records from the District Collector, Anantapur in the reference 3rd read above.

3. In the reference 4th read above, Kum. T.Aswani D/o T. Subbarayudu has filed W.P. No. 10143/2013, before the Hon'ble High Court, against the respondents for not allowing her to attend for the 2nd BDS Course pursuant to the order passed by the Government in Memo No.3442/CV.2/2013, dated 19.03.2013. The Hon'ble High Court of A.P., Hyderabad in the said WP, in its interim order dated 08.04.2013 has ordered that the petitioner shall be permitted to attend 2nd BDS Course, subject to further orders, the Government shall dispose of the appeal filed by the petitioner, against the proceedings of the District Collector, Anantapur in RC.No. MC3/9629/2011, dated 25.01.2013 before 10.06.2013 and submit a copy of the order to the court.

4. In the reference 5th read above, the District Collector, Anantapur has furnished the Parawise remarks and connected records on the said appeal petition filed by Kum. T.Aswani D/o T. Subbarayudu.

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5. In the reference 4th read above, Kum. T.Aswani D/o T. Subbarayudu has filed W.P. No. 14574/2014, before the Hon'ble High Court, against the respondents for not permitting her to attend for the 3rd BDS examination by not receiving the examination fee by 19.05.2014. The Hon'ble High Court of A.P., Hyderabad, while disposing the said WP on 06.11.2014 has directed the Government to pass appropriate orders before 15.01.2015, on the appeal preferred by the petitioner after providing an opportunity of hearing to the writ petitioner and also by assigning appropriate reasons for their conclusions. But due to several administrative difficulties the matter could not be disposed before the said date however, after giving notices from time to time to the Appellant /Appellant through his Counsel the matter has been examined by the Appellate Authority.

6. The said Appeal Petition has been posted for hearing on 25.07.2015, 28.11.2015, 09.04.2016 & finally on 14.05.2016 and the same has been informed to the Appellant and the Counsel for the appellant and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no claim what-so-ever in the matter and it will be decided based on the material available with the Government in the reference 7th read above. The Appellant, Counsel for the Appellant were present and argued the case and explained her community status and filed Written Arguments before the Appellate Authority in support of her community claim in the reference 8th read above.

7. As per the directions of the Hon'ble High Court of A.P., Hyderabad in W.P.No.10413/2013, dated 08.04.2013 & W.P.No.14574/2014, dated 06.11.2014, the matter has been taken up for hearing and during the hearings after hearing both the sides and the Government after careful examination of the records/ the copies of evidences/academic record/ grounds filed by the Appellant and proceedings of the District Collector, Anantapur, dated 25.01.2013 & records of the District Collector, Anantapur and after hearing the arguments of Appellant & Counsel for the Appellant, the Appellate Authority observed that:

I. The Appellant has claimed that her father belongs to ST-Yanadi community and her mother belongs to Balija Community and the District Collector, Anantapur appreciated and sanctioned incentive award of Rs. 3000/- towards inter caste marriage vide proceedings no.C/37/1993, dated 06.12.0993.

II. The appellant has stated that the respondents failed to observe that the petitioner and family members are tribal. Their forefathers living in tribal areas and their profession was procuring forest products like that dead wood, Honey and animals and sell in nearby villages and towns and resided in temporary tents and huts at the authorities of village. Later the families were engaged for agriculture labour under the landlords of the village and present generation children only are going to schools and colleges for education calming under Yanadi Caste.

III. The allegation of the District Collector, Anantapur without verifying the records and came to conclusion that the surname Thamatam of the appellant is uncommon among the Yanadi Tribes is baseless. The Chittoor District Tribal Welfare Officer is no way consented to the giving report and it is contradictory to the findings of RDO Penukonda and DLSC Anantapur.

IV. The appellant has also stated that the findings of the RDO and Tahsildar concluded that she belongs to ST-Yanadi Community, but the District Collector, Anantapur passed the impugned order.

V. The Tahsildar, Nallamada has enquired few issues and reported as follows:-

1. <u>The surname, Tamatam of the applicant is uncommon among Yanadi Tribe:</u> On enquiry in the village it is revealed that the persons with surname of Tamatam do belong to "Yanadi" tribe. No one disclosed that they are belong to other castes. It is revealed that their fore fathers with surnames of Tamata, Polimeni, Magasala an Acharla were migrated from Chittoor District.

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2. <u>The candidate in question is said to be an offspring of non-ribal mother (Balija) and father is said to be Yanadi Tribe.</u>

The candidate is off spring of non-tribal mother (Balija) and father is said to be Yanadi tribe. Her father Sri Tamata Subbrayudu, S/o Chinna Narayana was also issued Yanadi certificates by the then MROs and Tahsildars dated: 4.1.93, 27.1.97 and 7.2.09 treating him as Yanadi tribe. Her mother non-tribe residing in the same village had love marriage with Tamatam Subbarayudu without consent of her parents. Taking her father tribe "Yanadi" into consideration, the caste certificate is issued to her as "Yanadi" in their office.

3. <u>There is high incidence of false claims under the name of Yanadi castes in Anantapur District:</u>

In every instance of enquiry about caste status of the family members with surnames of Tamatam candidates the above details are coming only to light and no one denying as above. The other caste ryots also disclosing that they belong to Yanadi tribe.

Finally, the Tahsildar, Nallamada has reported that the caste certificate issued to Kum Tamatam Aswani, D/o Tamatam Subbarayudu, R/o Nallamada (M), Anantapur District as Yanadi Caste(ST) is Genuine one. Further, Revenue Divisional Officer, Penukonda has reported that he personally visited village on 14.10.2011 and enquired and agreed that all the details furnished by the Tahsildar, Nallamada are proved true in the enquiry.

VI. The District Tribal Welfare Officer, Chittoor District has reported that the Tamatam surnames families of tribals not residing in Masakavankapalli as claimed by the appellant. The forefathers were native of Chittoor District as claimed by them could not be traced by the Local Yanadi Community in Chittoor District because of the long generation gap and informed that no such surname of Tamatam attached to the name of the Yanadi Community in Chittoor District. The report is contradicting the report of RDO Penukonda and Tahslidar, Nallamada.

VII. Before the District Level Scrutiny Committee, the blood relatives of the appellant have given statements that they are the residents of the Masakavankapalli(V), Nallamada (M) Ananthapur District. They are the paternal relatives of the above petitioner. They belongs to the community of Yanadi- Scheduled Tribe. Since their forefathers time, they have been observing the customs and traditions of Yanadi Tribe their elders have long ago, migrated from Chittoor District of AP. But at present they neither have any relations nor have any relative at Chittoor District. Their tribe has no sub-tribes. If at all their tribe have any sub-tribes they have no knowledge about them. They only have surnames i.e, Tamatam, Magasala, Polimeni. They are doing their matrimonial alliances only within these three surname people and only within the Masakavankapalli village of Nallamada Mandal, Ananthapur District. They neither have any relations nor have any relatives outside Masakavankapalli village of Nallamada Mandal, Ananthapur District. Some of their children are studying in Government established Colleges, in support of this they have submitted the Transfer certificates & admission Tickets. Further some of their children are working in Government sectors under the Yanadi ST quota but they have no documentary proofs to support the particular statement.

VIII. The DLSC was observed that after analysis and all the scrutinizes and enquires and depositions of the applicants blood relatives the following are taken into consideration :

i. They do not have any basic knowledge about their tribal culture.

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ii. They are simply stating that their fore fathers have been migrated from the Chittoor District. But they said they have no relatives at Chittoor district at present. They have not even submitted any address of their relatives to enquire further into this matter pertaining to their claim as Yanadi-ST.

iii. They are again and again reiterating that their tribe has no sub-tribes & if at all their tribes has any sub-tribes, they have no knowledge about them.

iv. They said their tribe has only 3 surnames i.e., Tamatam, Magasala, Polimeni.

v. They said they are undertaking their matrimonial alliances only within these 3 surnames people and particularly within the village of Masakavankapalli, H/o Kurumala, Nallamada (M), Anantapur District only.

vi. They have restated that all the people of their tribe (Yanadi) i.e. their blood relatives, families, kin & kith are residing only in the village of Masakavankapalli, Nallamada Mandal, Anantapur District.

vii. They said they have no relatives outside this village and Mandal.

viii. They did not produce any documentary evidence as per the depositions of the relatives of the appellant that few of their children working in State/ Central Government sectors.

IX. Under section 6(3) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.

X. Further it is observed that as per G.O. Ms. No. 371, Employment & Social Welfare (B2) Department, dated 13.04.1976 in Annexure-II at para 4 has stated that “in the case of marriage between a tribal with a non-tribal the main factor or consideration is whether the couple were accepted by the tribal society to which the tribal spouse belongs. If he or she, as **the case may be, is accepted by the society then their children shall be deemed to be Scheduled Tribes.** But this situation can normally happen when the husband is a member of the Scheduled Tribe. However, a circumstances may be Scheduled Tribe woman may have children from marriage with a non- Scheduled Tribe man. In that event the children may be treated as Scheduled Tribes only if the members of the Scheduled Tribe community accept them and treat them as members of their own community.

XI. The Appellate Authority has observed that as per the report of RDO, Penukonda and Tahsildar, Nallamada, it is found that the appellant is the off-spring of the inter-caste marriage couple. The DTWO has submitted his report to the District Collector has shown in the impugned order of the Collector also admits that the father of the appellant belongs to ST-Yanadi. But, he has stated in his report to the District Collector that no people with Tamtam surname (of tribal community) are residing in the village maskavanikapalli. Obviously, this report is quite contrary to the report submitted by the Tahsildar Nallamada, RDO Penukonda. Further, neither DLSC nor DTWO nor District Collector disputed the fact that the father of the appellant belongs to ST-Yanadi but admittedly the mother of the appellant belongs to OC-Balija community. Whether the appellant stayed with her father and whether she was treated as ST or not by the people of the ST Community and whether the father certificate is true or not are to be thoroughly enquired into with reference to the documents produced by the appellant. In the instant case non consideration of several documents and coming to a conclusion to differ with the opinion of DLSC is erroneous on part of the collector and the same can’t be justified or sustained if examined in correct legal perspective and no doubt learned District Collector toiled much to differ with the opinion of DLSC but the reasons

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given for the same are obviously are not convincing nor acceptable under law. Though he is empowered to veed out the false caste certificates he is also burdened to ensure that true and innocent people calming benefits under the said Act and Constitution of India are not deprived of their right. The report of DTWO, Chittoor is bald and grossly in sufficient to differ with the opinion of DLSC. Therefore, the Government is of considered view that though the District Collector differed with the findings of the DLSC the said order for cancellation is not as per established principles of law and hence not sustainable.

8. The Government, in exercise of the powers conferred under Section 8(1) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No16 of 1993), decide that the Revision Petition filed by Kum. T.Aswani D/o T. Subbarayudu is allowed in part and the matter remanded to the District Collector, Anantapur for afresh enquiry and give opportunity to the Appellant and to pass an order according to law within 60 days from the date of receipt the order. Hence, Proceedings of the District Collector, Anantapur issued vide Rc.No. MC3/9629/2011, dt.25.01.2013 is hereby set-aside and the matter remanded to the District Collector, Anantapur for afresh enquiry and give opportunity to the both the parties and to pass an order according to law within 60 days from the date of receipt the order.

09. Consequently, the District Collector, Anantapur shall take necessary action in the matter.

10. The records (containing Rc.No.MC3/9629/2011, dt.25.01.2013, pages 01-422 cf) received from District Collector, Anantapur through in the reference 5th read above, are returned herewith in original to District Collector, Anantapur and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.P. SISODIA
PRINCIPAL SECRETARY TO GOVERNMENT

To
The District Collector, Anantapur (w.e)
(with original records) (BY RPAD)

Kum. T.Aswani D/o T. Subbarayudu,
Occ: Student, R/o Masakavankapalli (V),
H/o Kurumala, Naliamada Mandal, Anantapur District.

Sri M.Karibasaiah, Advocate,
H.No. 10-1-820/1, Saifabad,
Near Rock Memorial Church, Hyderabad.

Copy to :
The Registrar, Dr. NTR University of Health Sciences,
A.P., Vijayawada. (for favour of information)
The Registrar, APHC, Hyderabad. (for favour of information)

The Director of Tribal Welfare, AP. Amaravathi.

The Director, TCR& TI, AP, Amaravathi.
The OSD to M(SWE& TWE).
The P.S. to Principal Secretary(TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER